

MEMORANDUM OF AGREEMENT

The undersigned New Boston Garden Corporation, a Delaware corporation with an address at 150 Causeway Street, Boston, Massachusetts 02114 (together with one or more development affiliates to be formed, "Garden"), the City of Boston, a public body politic and corporate and a political subdivision of the Commonwealth of Massachusetts acting by and through the Public Facilities Commission; (the "City"), having offices at 26 Court Street, Boston, Massachusetts 02108, and the Boston Redevelopment Authority, a public body politic and corporate, having offices at Boston City Hall, Boston, Massachusetts 02201, (the "BRA") hereby agree this day, January 26, 1989, as follows with respect to the acquisition, improvement of and development of rights in certain real estate now owned or to be acquired by Garden (the "Site").

1. Garden owns the portion of the Site on which the Boston Garden and North Station are now located. The Massachusetts Bay Transportation Authority (the MBTA) owns a portion of the Site, approximately 3 acres, located to the north of the Garden parcel shown on the plan attached hereto as Exhibit A. The City, pursuant to the provisions of Chapter 15, Section 31 of the Acts of 1988, has received by deed dated May 31, 1988 from the MBTA certain air rights over portions of the Site shown on Exhibit A as Parcels A1 and A2, and will receive certain additional air rights and rights of support from the MBTA with respect to land shown on Exhibit A as Parcel A3, and it is further authorized to reconvey for development purposes such air rights at a level of thirty-five feet above the highest elevation of the MBTA portion of the Site together with rights of support (the "Air Rights"). The BRA owns a certain right of way to the west of the Garden parcel connecting Causeway Street and the parcel owned by the MBTA shown on Exhibit A (the "BRA Parcel"). Garden must acquire certain development rights and reasonably necessary easements for structural support systems, lobbies, and service areas to provide direct support for and access to the Garden Complex (subsequently described). Acquisition by Garden of other real property interests may be necessary in order that development and construction of the Garden Complex can be successfully and feasibly completed.

2. The MBTA has determined that the Site must accommodate necessary mass transportation and commuter rail improvements, and accordingly intends to construct on a portion of the Site certain commuter rail improvements, and an underground parking garage and, in connection therewith, has or will have agreed to construct foundations and other support systems for an Arena and other facilities to be constructed by Garden on the Air Rights. Furthermore, MBTA intends to construct or cause to be constructed a relocated Green Line tunnel running from Causeway Street through the Site to reconnect ultimately with the Green Line right of way to Lechmere Station.

3. Garden has been tentatively designated developer of the Site by the City, and intends to construct a new multi-purpose sports Arena, and a commercial development of office space, a hotel, and underground parking, on a portion of the Site and on the Air Rights as more particularly described on Exhibit B (collectively, the "Garden Complex" or "Complex"). Additionally, as part of the Complex, Garden intends to construct a passenger waiting room, retail facilities and appropriate pedestrian access thereto and to integrate a new Green Line

tunnel as part of the design for subsurface work on Building C, which building is described in Exhibit B, all to provide improved service to the public and to improve the MBTA facilities.

4. Significant progress has been made in the design of the Complex and the coordination between the Garden Complex and the MBTA improvements, but many aspects of the Site and the Garden Complex remain to be approved by a variety of federal, state and municipal agencies and require the finalization of agreements with the MBTA, a Sale and Construction Agreement for the Air Rights Parcels ("Sales and Construction Agreement") with the City and agreements regarding other property rights before the Garden Complex can be constructed.

5. The parties agree that it is in their mutual best interests, and in the interests of the general public, to cooperate in the completion of the Garden Complex, for the City and the BRA to grant to Garden development rights and other necessary or appropriate temporary and/or permanent cross-rights and easements for use and access during and after construction, and undertake the obligations set forth in this Agreement.

6. Garden will prepare plans and file applications for and diligently pursue the zoning approval for a Master Planned Development Area ("Master PDA") pursuant to the provisions of Article 3 of the Boston Zoning Code or any other zoning relief necessary for the approval of the Complex in accordance with the building program and other dimensions set forth on Exhibit B and will prepare and proceed with the filing of all other necessary applications and requests for permits and approvals for the Garden Complex. Garden will also proceed diligently toward the completion of a satisfactory agreement with the MBTA for necessary support systems and other rights to permit construction of the Complex, the completion of a Sales and Construction Agreement with the City and the acquisition of other property rights to enable a feasible project to be developed in accordance with Exhibit B.

7. The City agrees to convey to the Garden good, clear and marketable title to the Air Rights, excepting only certain air rights above the arena portion of the Garden Complex, upon approval of the Master PDA and execution of a Sales and Construction Agreement. The price for the Air Rights shall be twenty million dollars (\$20,000,000) payable as follows:

One million dollars (\$1,000,000) shall be payable as a good faith deposit at the time of tentative designation of Garden by the Public Facilities Department. Such one million dollar (\$1,000,000) deposit shall be held in a separate escrow account (the "Account") by the City of Boston Collector-Treasurer and invested in securities mutually agreeable to the parties and in accordance with statutes governing investments by the City of Boston Collector-Treasurer, or shall be paid in the form of an irrevocable letter of credit to be held by the City of Boston Collector-Treasurer, which letter of credit shall be drawn on a Boston bank on terms acceptable to the City. Such one million dollar (\$1,000,000) deposit plus interest earned through March 15, 1990 shall be applied to the purchase price if the conveyance is consummated as anticipated in this Agreement. If Garden notifies the City before March 15, 1990 that it will not proceed with the project, the one million dollar (\$1,000,000) deposit shall be refunded but the earned

interest shall be retained by the City. Funds shall be released from the Account in accordance with the terms of this Agreement.

Nine million dollars (\$9,000,000) shall be payable at the time that the Sales and Construction Agreement is executed, but not later than March 15, 1990. Such nine million dollar (\$9,000,000) payment shall also be deposited in the Account and invested in securities mutually agreeable to the parties and in accordance with statutes governing investments by the City of Boston Collector-Treasurer, or shall be paid in the form of an irrevocable letter of credit to be held by the City of Boston Collector-Treasurer, which letter of credit shall be drawn on a Boston bank on terms acceptable to the City. Interest earned on and after March 15, 1990 on the one million dollar (\$1,000,000) deposit and the nine million dollar (\$9,000,000) payment shall not be applied to the purchase price and shall belong to the City. If Garden notifies the City on or after March 15, 1990, that it will not proceed with the project, this nine million dollar (\$9,000,000) payment shall be refunded, as shall 50% of the interest earned on such nine million dollar (\$9,000,000) payment. However, neither the one million dollar (\$1,000,000) payment or any other interest shall be refundable.

The Final Payment shall be payable at the execution of the air rights deed. The Final Payment shall be ten million dollars (\$10,000,000), plus interest on the ten million dollars (\$10,000,000) charged at the rate of prime plus one percent (1%) for the period from March 15, 1990 to the date of Final Payment, minus the interest earned on the Account prior to March 15, 1990.

If the Final Payment is not made on or before September 15, 1992, Garden will be deemed to be in default, and will be returned its \$9 million deposit. The City will retain the initial one million dollars (\$1,000,000) payment and all interest earned on the Account.

8. The parties agree that among the additional property rights required to develop the Complex in accordance with Exhibit B may include a portion of the existing Nashua Street right of way or air rights above such right of way. The City of Boston Transportation Department has indicated its intention to relocate the Nashua Street right of way eighty feet (80') to the west. The parties agree to cooperate and negotiate in good faith in order to convey to Garden the necessary rights in or over such right of way upon mutually satisfactory terms simultaneously with the conveyance of the Air Rights.

9. The BRA agrees to convey to the Garden subject to the rights of others certain access, egress, support and other easements and rights in the BRA Parcel reasonably necessary in order to facilitate the development and operation of the Complex as contemplated on Exhibit B, simultaneously with the conveyance of the Air Rights.

10. The City shall be entitled to receive one and one-half percent (1.5%) of the gross proceeds of any financing, refinancing, or sale of the Arena and/or Building A, excepting only the original construction financing for the Arena, the original permanent financing for the Arena if such permanent financing does not exceed the certified total development cost of the Arena, the original construction financing for Building A, which building is described in Exhibit B, and the original

permanent financing for Building A if such permanent financing does not exceed the certified total development cost of Building A.

The original structuring of the ownership interests in the development entity which shall develop the Arena, which may include interests conveyed to non-Garden affiliates prior to construction, shall not constitute a sale for purposes of this section, and transfers of ownership interests in the Arena between or among legal affiliates of Garden shall not constitute a sale for purposes of this section unless such transfer involves the sale of equity interests to entities not affiliated with Garden, admission of other capital partners, or any additional financing or refinancing of the arena. Similarly, the original structuring of the ownership interests in the development entity which shall develop Building A, which may include interests conveyed to non-Garden affiliates prior to construction, shall not constitute a sale for purposes of this section, and transfers of ownership interests in Building A between or among legal affiliates of Garden shall not constitute a sale for purposes of this section unless such transfer involves the sale of equity interests to entities not affiliated with Garden, admission of other capital partners, or any additional financing or refinancing of Building A.

11. Garden shall be responsible for the payment of Development Impact Fees required as set forth in the City of Boston Zoning Code.

12. The Complex shall be assessed for real estate tax purposes and the Garden shall pay real estate taxes in accordance with the customary tax assessment procedures of the City of Boston pursuant to Chapter 59 of the Massachusetts General Laws.

13. The Arena will be financed consistently with sound business practices and underwriting in order to operate on at least a break-even level based upon commercially reasonable projections.

14. The Garden shall provide a child care facility in accordance with applicable legal requirements at a location to be agreed upon by the parties as the design for the Complex becomes further refined.

15. Notwithstanding any specific language set forth above, the parties agree that as the design for the Complex evolves, there will in all probability arise the need for certain other agreements for support, access and egress, passage of necessary utilities or other services, agreements for lateral support, encroachments, licenses or similar arrangements facilitating the operation of the Complex. If such agreements are necessary or appropriate, each party shall grant or approve such change. The parties also agree to use all reasonable efforts to negotiate and execute a mutually satisfactory Sales and Construction Agreement consistent with the provisions of Exhibit B.

The parties recognize that the successful completion of the development of the Complex will require extensive coordination of the planning and construction of the Complex with the planning and construction of the MBTA transportation improvements, the Massachusetts Department of Public Works Highway improvements and other public construction activities currently being planned. The parties agree to act diligently and cooperate fully with each other and with

the other public agencies and their consultants in order to maximize the successful and feasible completion of the Complex.

16. In the event it is necessary or desirable to seek special legislation in order to accomplish the objectives set forth in this Memorandum of Agreement, the City and the BRA agree to provide all reasonable assistance in the effort to have such legislation adopted.

17. To the extent any document, plan or proposal is submitted to the other for action or approval, each party agrees to use all reasonable efforts to respond to such request in a reasonable period of time and, to the extent such response is negative, setting forth specific reasons for such negative response and proposing reasonable alternative courses of action. Any such request shall be sent:

If to City: Director
City of Boston
Public Facilities Department
26 Court Street, 6th Floor
Boston, MA 02108

with copies to: Public Facilities Department
Attention: General Counsel
26 Court Street, 6th Floor
Boston, Ma 02108

If to BRA: Boston Redevelopment Authority
Office of the Director
One City Hall Square
Boston, MA 02201

with copies to: Boston Redevelopment Authority
Chief General Counsel
One City Hall Square
Boston, MA 02201

If to Garden: Chairman
New Boston Garden Corporation
150 Causeway Street
Boston, MA 02114

with copies to: Mr. Paul McDonough
Goodwin Procter and Hoar
One Exchange Place
Boston, MA 02109

Executed this day, January 26, 1989, by:

CITY OF BOSTON

By: _____

BOSTON REDEVELOPMENT AUTHORITY

By: _____

NEW BOSTON GARDEN CORPORATION

By: _____

ARENA PROJECT DEVELOPMENT PROGRAM

Overall Development Program

New arena on air rights to the rear of Boston Garden.
 Building A, office and/or hotel, height 375 feet, Nashua Street.
 Building B, hotel or office, height 350 feet, Causeway Street.
 Building C, office, height 400 feet, Causeway Street.

Total office and retail gsf	=	1,802,000	to	1,672,000
Total hotel gsf	=	500,000	to	630,000
Total office, hotel, & retail gsf	=	2,302,000		<u>2,302,000</u>

Arena Development Program

Height of arena building from grade: 155 feet
 Approximately 17,200 seats for hockey
 Approximately 18,400 seats for basketball
 105 boxes (seats included in above totals)

Building "A" Development Program

Height of building from grade: 375 feet
 Use: office and/or hotel
 Total gross square feet: 790,000 gsf (less up to 56,000 gsf which
 can be shifted to building B)

Building "B" Development Program

Height of building from grade: 350 feet
 Use: hotel or office
 Total gross square feet: 630,000 gsf (plus up to 56,000 gsf which
 can be shifted from Building A)

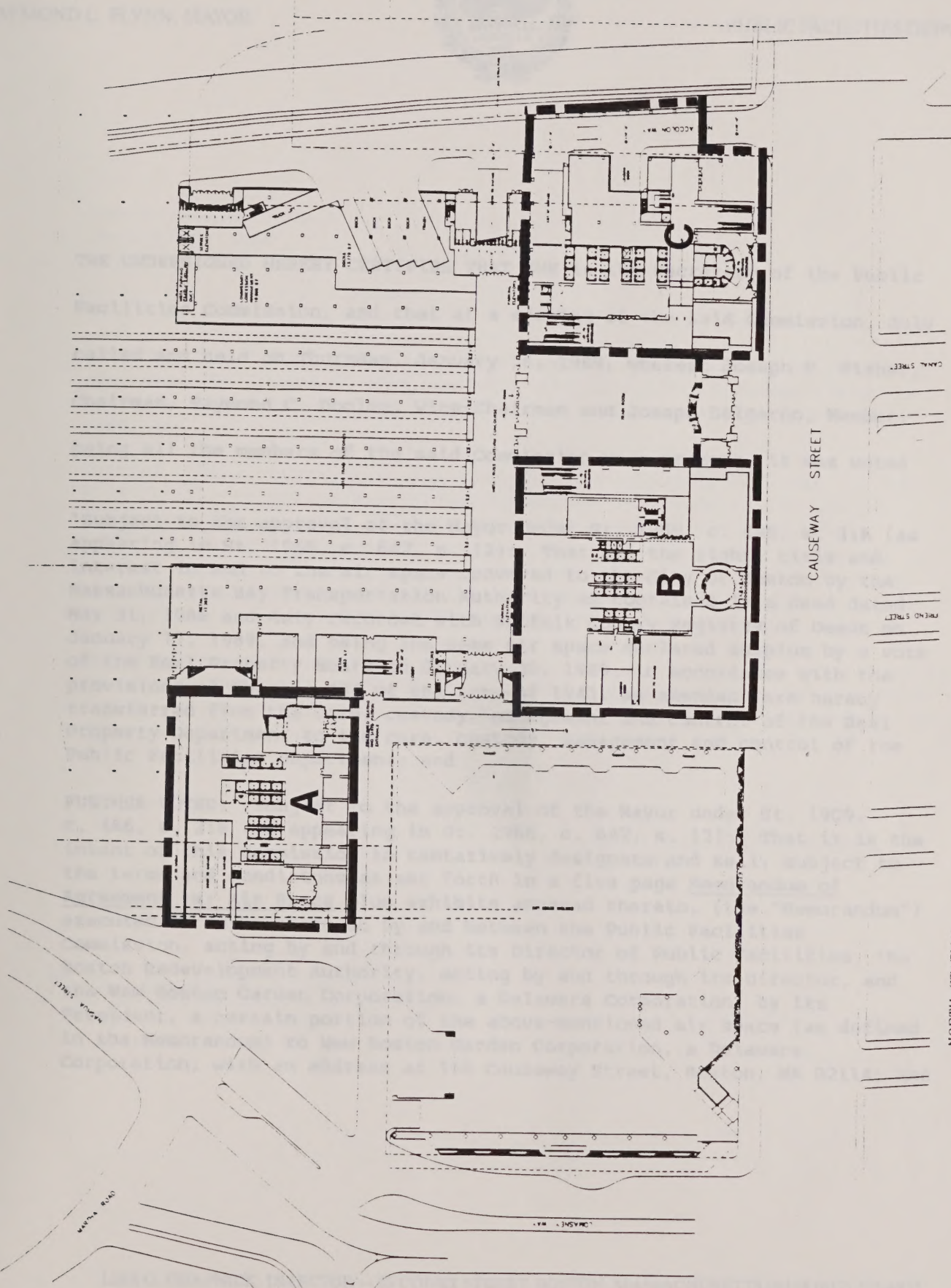
Building "C" Development Program

Height of building from grade: 400 feet
 Use: office
 Total gross square feet: 832,000 gsf

Other ancillary retail and office use in pedestal: 50,000 gsf

Parking

Delaware North spaces	1100 spaces
MBTA parking spaces	1350 spaces



NORTH STATION
 MIXED USE DEVELOPMENT • NEW BOSTON GARDEN
 THOMSON FRENCH ASSOCIATES INC. MA
 ELLERBE BECKETT INC. MO
 KANSAS CITY

GROUND FLOOR PLAN
 SCALE: 1" = 30' 0"

SKG-001b
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RAYMOND L. FLYNN, MAYOR



PUBLIC FACILITIES DEPARTMENT

THE UNDERSIGNED HEREBY CERTIFIES THAT SHE is the Secretary of the Public Facilities Commission, and that at a meeting of the said Commission, duly called and held on Thursday, January 26, 1989, whereat Joseph F. Fisher, Chairman, Raymond C. Dooley, Vice-Chairman and Joseph Delgado, Member, being all the members of the said Commission were present, it was voted

"Subject to the approval of the Mayor under St. 1909, c. 486, s. 31A (as appearing in St. 1966, c. 642, s. 12): That all the right, title and interest in and to the air space conveyed to the City of Boston by the Massachusetts Bay Transportation Authority as contained in a Deed dated May 31, 1988 and duly recorded with Suffolk County Registry of Deeds on January 17, 1989, and being the same air space declared surplus by a vote of the Real Property Board on January 20, 1989, in accordance with the provisions of Chapter 434 of the Acts of 1943, as amended, are hereby transferred from the care, custody, management and control of the Real Property Department to the care, custody, management and control of the Public Facilities Department; and

FURTHER VOTED: Subject to the approval of the Mayor under St. 1909, c. 486, s. 31B (as appearing in St. 1966, c. 642, s. 12): That it is the intent of this Commission to tentatively designate and sell, subject to the terms and conditions as set forth in a five page Memorandum of Agreement re: Air Space plus exhibits annexed thereto, (the "Memorandum") executed or to be executed by and between the Public Facilities Commission, acting by and through its Director of Public Facilities, the Boston Redevelopment Authority, acting by and through its Director, and the New Boston Garden Corporation, a Delaware Corporation, by its President, a certain portion of the above-mentioned air space (as defined in the Memorandum) to New Boston Garden Corporation, a Delaware Corporation, with an address at 150 Causeway Street, Boston, MA 02114; and

RAYMOND L. FLYNN, MAYOR



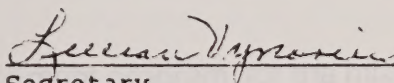
PUBLIC FACILITIES DEPARTMENT

Certificate of Vote
January 26, 1989
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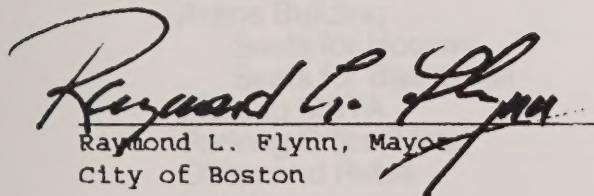
FURTHER VOTED: That the Director be, and she hereby is, authorized to advertise the intent of this Commission to sell the above-described air space in accordance with the provisions of Chapter 642 of the Acts of 1966; and

FURTHER VOTED: Pursuant to the authority contained in St. 1966, c. 642, s. 3(f)(ii) the Public Facilities Commission does hereby delegate full authority of its powers and functions to the Boston Redevelopment Authority for the purposes of studies, evaluations, design review and to perform any and all services necessary and appropriate to recommending disposition and development of the above-mentioned air space and to report back to the Public Facilities Commission its recommendations;

AND FURTHER VOTED: That the Director be, and she hereby is, authorized to execute, acknowledge and deliver such other documents and take such other actions as she in her sole discretion deems appropriate to consummate the above transactions."


Secretary

APPROVED:


Raymond L. Flynn, Mayor
City of Boston

MEMORANDUM

January 26, 1989

TO: BOSTON REDEVELOPMENT AUTHORITY AND
STEPHEN COYLE, DIRECTOR

FROM: WILLIAM WHITNEY, ASSISTANT DIRECTOR OF URBAN DESIGN
AND DEVELOPMENT
ERIC SCHMIDT, PROJECT MANAGER FOR NORTH STATION

SUBJECT: NORTH STATION REDEVELOPMENT

SUMMARY: Request authorization to permit the Director to enter into an agreement with the City of Boston and New Boston Garden Corporation regarding the construction of a new arena and a mixed-use development; and to authorize the BRA Director to act as development agent for the City of Boston with respect to the redevelopment of the City's North Station properties.

On January 26, 1989, the Public Facilities Commission voted to tentatively designate and vote their intent to sell said air-rights to Delaware North as outlined and defined in the Memorandum of Agreement, to authorize the President of Public Facilities to sign a Memorandum of Agreement with Delaware North as developer of the city's air-rights at North Station, and to authorize the BRA to act as the Public Facilities Department's agent in carrying out further reviews and actions necessary to complete the above named project.

The proposed Memorandum of Agreement between the Authority, the City of Boston and New Boston Garden Cooperation would allow the New Boston Garden Corporation and one or more development affiliates, to acquire, improve and develop the city's air-rights as outlined in substantial accord with the attached Memorandum of Agreement. The Memorandum outlines various actions that each party will comply with.

The proposed project development program for the mixed-use development (see attached Exhibit B) includes the following:

Arena Building			
Seats for Hockey	17,200		
Seats for Basketball	18,400		
Parking MBTA	1,350	(approximately)	
Parking Office/Hotel	1,100	(approximately)	
Office and Retail	1,672,000	1,802,000	GSF
Hotel	<u>630,000</u>	<u>500,000</u>	GSF
	2,302,000	2,302,000	

The project design concept will provide a state-of-the-art transportation facility and sports arena as integral parts of an office, hotel, and

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retail mixed-use complex. The new arena facility will sit on top of the new MBTA North Station Commuter-rail facility, expected to include 12 tracks. This combined structure will be approximately 155' in height. To the west of the arena an office and/or hotel tower will rise to the height of 375'. Along Causeway Street replacing the existing arena will be two new buildings; to the west of Canal Street terminus a hotel complex of up to 700 plus rooms and/or office space will rise up to a maximum height of 350', and to the east of Canal Street terminus a 400' office tower (see Exhibit B). The base of these two buildings along Causeway Street will be required to have a 50' setback at 100' height.

The developer will provide the necessary development plans and plan revisions as required under Articles 3(a) and 31 and Boston Zoning Code. Once all development permitting is attained by the developer, the City will convey good marketable and clean title to the air-right excepting only certain air-rights above the Arena portion. The Authority agrees in the Memorandum of Agreement to facilitate the development by granting easements as necessary to the street between the GSA building and the current Boston Garden.

The disposition price to the city for the air-rights shall be twenty million (\$20,000,000), with a one million dollar deposit (\$1,000,000) payable upon execution of the attached Agreement, a nine million dollar deposit (\$9,000,000) payable upon execution of a Sales and Construction Agreement not later than March 15, 1990, and a final payment of ten million dollars (\$10,000,000) payable upon the transfer of the deed to said air-rights. In addition, the City shall be entitled to receive one and one-half percent (1.5%) of the gross proceeds of any refinancing or resale of the Arena and/or Building "A". These additional development agreements shall in all cases be consistent with the overall parameters as outlined in attached Exhibit B.

An appropriate vote follows:

VOTED: That the Director be and hereby is authorized to enter into the Memorandum of Agreement substantially in the form as attached.

VOTED: That the Authority agrees to act as development agent for the City of Boston with respect to the redevelopment of North Station.

